

**SUMMARY REPORT OF INVESTIGATION<sup>1</sup>****I. EXECUTIVE SUMMARY**

Date of Incident:	March 18, 2017
Time of Incident:	10:20am
Location of Incident:	XXXX West 60 <sup>th</sup> Street, Chicago, IL
Date of COPA Notification:	April 16, 2018
Time of COPA Notification:	3:47pm

CPD officers responded to multiple domestic abuse calls from the subject address initiated by Subject 1. Due to the substance of the calls to OEMC and their observations of the behavior of the aggressor, Subject 2, the responding officers requested backup and CFD assistance with entering the apartment. As Subject 2 fled the scene, a CPD member attempted to apprehend him and Subject 2 subsequently broke the officer's arm and shoulder. Subject 2 made good his escape but was apprehended at a criminal court hearing a few days later. Over a year later, Subject 1 filed this complaint alleging CPD entered her apartment unlawfully and later falsely arrested Subject 2. For the following reasons, COPA finds that these allegations are **EXONERATED**.

**II. INVOLVED PARTIES**

Involved Officer #1:	Officer A Star #Unknown; Employee #XXXX (Not Active) DOA: XXXXXXXX, 2003 DOB: XXXXXX, 1964 Male/Hispanic
Involved Officer #2:	Officer B, Star #XXXXX; Employee #XXXXX DOA: XXXXXXXX, 1998 DOB: XXXXXX, 1964 Male/Hispanic
Involved Officer #3:	Officer C (April 5, 2017 Arrest Date) Star #XXXXX; Employee #XXXXX DOA: XXXXXXXX, 2005 DOB: XXXXXXXXX, 1981 Male/Hispanic

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Involved Officer #4:	Officer D (April 5, 2017 Arrest Date) Star #XXXXX; Employee #XXXXX DOA: XXXXXXXXXXXX, 1990 DOB: XXXXXXXXXXXX, 1963 Male/Hispanic
Involved Officer #5:	Sergeant A, Star #XXXX; Employee #XXXXX DOA: XXXXXXXXXXXX, 1999 DOB: XXXXXXXXXXXX, 1970 Male/White
Involved Officer #6:	Officer E, Star #XXXXX; Employee #XXXXX DOA: XXXXXXXXXXXX, 1996 DOB: XXXXXXXXXXXX, 1964 Male/White
Subject #1:	Subject 1 DOB: XXXXXXXXX, 1990 Female/Black
Subject #2:	Subject 2 (Criminal Defendant) DOB: XXXXXXXXX, 1989 Male/Black

### **III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Officer A	1. It is alleged that on March 18, 2017, at approximately 10:20am, you entered the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11.	EXONERATED
Officer B	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street,	EXONERATED

	Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	
Officer E	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	EXONERATED
Sergeant A	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	EXONERATED
Officer C	1. It is alleged that on April 5, 2017, at approximately 10:25am, at XXXX South California Blvd., Chicago, Illinois, you did unlawfully arrest Subject 2 without probable cause in violation of Rules 1, 2, 3, 8, 10 and 11 of Police Rules of Conduct.	EXONERATED
Officer D	1. It is alleged that on April 5, 2017, at approximately 10:25am, at XXXX South California Blvd., Chicago, Illinois, you did unlawfully arrest Subject 2 without probable cause in violation of Rules 1, 2, 3, 8, 10 and 11 of Police Rules of Conduct.	EXONERATED

#### IV. APPLICABLE RULES AND LAWS

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##### CPD Rules

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Rule 1 – Violation of any law or ordinance.

Rule 2 – Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3 – Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

Rule 6 – Disobedience of an order or directive, whether written or oral.

Rule 8 – Disrespect to or maltreatment of any person, while on or off duty.

Rule 10 – Inattention to duty.

Rule 11 – Incompetency or inefficiency in the performance of duty.

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**Federal Laws**

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Fourth Amendment of the United States Constitution

**V. INVESTIGATION<sup>2</sup>****a. Interviews****1. Statement of Subject 1**

The following is a summary of Subject 1’s April 17, 2018 statement to COPA. On the night of March 17, 2017, Subject 1 let her cousin, Civilian 1, spend the night at her apartment against the wishes of her boyfriend, Subject 2. On the morning of March 18, 2017, she and Subject 2 left to take her children to school. When they returned to her apartment, at approximately 7:00am, they discovered that Civilian 1 had stolen electronics and other valuables. Subject 1 and Subject 2 began to argue. Subject 1 stated that she then called the police to report the theft.<sup>3</sup> Two officers arrived, and Subject 1 voluntarily let them into the apartment.<sup>4</sup> Subject 2 and the officers began to argue, and Subject 1 convinced them to leave to deescalate the situation.

As the officers returned to their patrol vehicle, Subject 2 resumed the argument by opening the apartment window and shouting profanities at them. Subject 1 stated that she heard the officers call for backup and CFD to forcibly open her door to arrest Subject 2.

When the requested units arrived, Subject 2 fled through the backdoor. Subject 1 begged the officers not to break down her door, given that Subject 2 was no longer there. She refused to let the officers enter, stating that they had no right to enter her apartment again without a warrant.

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<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>3</sup> The OEMC Event Query Logs indicate the calls were for domestic violence, with no mention of burglary.

<sup>4</sup> The Police Officers are later identified as Officer A, Star # XXXXXX (Job status unknown now) and Officer B, Star #XXXXXXXX.

Nevertheless, CFD personnel proceeded to break down her door and officers entered, searching for Subject 2.

Subject 1 stated that the police returned to her apartment twice looking for Subject 2: March 19, 2017 and March 21, 2017. On April 6, 2017, she accompanied Subject 2 to the George N. Leighton Criminal Courthouse for his court date.<sup>5</sup> After his hearing, CPD officers arrested Subject 2 outside the courtroom.

## 2. Subject 2

Subject 2's attorney declined to make his client available for an interview with COPA.<sup>6</sup>

### b. Digital Evidence

#### **AUDIO CONTENT OF OEMC / 911 - CALLS MARCH 18, 2017**

The following is a synopsis of the phone call recordings related to this incident provided by Chicago's Office of Emergency Management and Communications (OEMC).<sup>7</sup>

#### **OEMC RECORDS FROM MARCH 18, 2017**

##### 1. OEMC - CPD Transmissions

At 4:50am, Subject 1's mother, Civilian 2<sup>8</sup>, called 911 to report that her daughter was attacked by her boyfriend.

Transmissions from 6:14am to 7:14am<sup>9</sup> between OEMC dispatch and officers concerning this incident<sup>10</sup> included the following: officers were informed that a domestic violence incident was occurring at the incident location; responding officers requested back-up and CFD assistance to enter the apartment; a child at the scene was in danger; officers requested an ambulance for an officer down; the name and description of Subject 2 was provided; and that Subject 2 had threatened to shoot officers.<sup>11</sup>

OEMC provided a set of recordings on a separate disc which contained the following communications with CPD about the subject incident.<sup>12</sup> Subject 1 stated her boyfriend punched her in the face, that he was intoxicated, and that responding officers were on-scene for 45 minutes (1:02:20); and that Subject 1 keeps calling (1:06:50).

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<sup>5</sup> Subject 1 did not provide details as to the nature of Subject 2's reason for being in court.

<sup>6</sup> Att. 15 – Letter from Attorney A.

<sup>7</sup> Note: Subject 1 stated in her interview that she first called police after she returned home at 7:00am. See Att. #8 at 3:56.

<sup>8</sup> COPA was unable to determine if Subject 1's mother was present during Subject 2's alleged attack on Subject 1.

<sup>9</sup> The exact time that the first CPD officers arrived at the apartment is unclear.

<sup>10</sup> Att. #30.

<sup>11</sup> See Att. #42, Investigative Report for times of calls; and Att. #30, Audio uploaded to CLEAR.

<sup>12</sup> Att. 33

## **2. Calls to OEMC from Subject 1's Apartment.<sup>13</sup>**

OEMC records document ten telephone calls reporting problems at Subject 1's apartment between 4:53 am and 6:17 am. Subject 1's mother made one call and Subject 1 made nine calls. These calls reported the following information: Subject 1 was in danger because Subject 2 was punching her face; Subject 2 was threatening and endangering Subject 1 and her four-year-old daughter; Subject 2 was a crack dealer and was high on drugs and alcohol; Subject 2 had a gun; and Subject 2 refused to give Subject 1 her car keys, preventing her from leaving the apartment. None of the calls mentioned a theft or Subject 1's cousin, Civilian 1. Event dispatches after 6:17 am indicate CFD assisted police in breaking down the apartment door over Subject 1's objections.<sup>14</sup>

### **c. Documentary Evidence**

#### **1. Arrest Report RD #XXXXXXXX<sup>15</sup>**

Officers C and D of the CPD Fugitive Apprehension Unit arrested Subject 2 on April 5, 2017, at the George N. Leighton Criminal Courthouse. The Arrest Report describes Subject 2 as wanted pursuant to a warrant issued on March 21, 2017, based on events occurring March 18, 2017, where Subject 2 threatened police officers with a two-by-four and threw Officer A to the ground, breaking his right humerus and shoulder.

#### **2. Case Supplementary Report RD #XXXXXXXX<sup>16</sup>**

On March 21, 2017, Detective A interviewed Subject 1 regarding the incident. The following is a summary: Subject 1 denied calling the police concerning Subject 2 beating her. Rather, she claimed to have called CPD to report a theft by her cousin, Civilian 1. The report notes Subject 1 refused to say why Subject 2 would not open the door for the police. She complained that the police kicked her door open for no reason, and finally stated that she no longer wanted to speak to the detective.

The report also describes Detective B's interview of Subject 2 shortly after his April 5 arrest.<sup>17</sup> Subject 2 volunteered that he thought he was in custody due to an incident about two weeks earlier, when he and his girlfriend got into a fight over her cousin's theft of his belongings. He further stated that during the argument, he was intoxicated ("tipsy" when he arrived at the apartment at approximately 1:00 am). He denied hitting his girlfriend and stated that she called the police because she is crazy. He apologized for calling the officers names and being disrespectful. Subject 2 stated that he ran once the officers broke down the door and does not understand why the police were looking for him.

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<sup>13</sup> Att. #27 is the CD containing a summary of the Event Calls.

<sup>14</sup> See Att. #42, summary of event calls.

<sup>15</sup> Att. #10, Subject 2's Arrest Report.

<sup>16</sup> Att. #12, Case Supplementary Reports.

<sup>17</sup> In the report, Detective B notes that Subject 2 initially asked for his attorney to be present during questioning, to which he informed Subject 2 that no questions would be asked of him. However, the report indicates that Subject 2 nevertheless voluntarily made the statement summarized herein, without any prompting.

Detective A conducted separate interviews of the CPD officers involved in the March 18, 2017 incident. Each had substantially similar accounts of the incident at Subject 1's apartment, which is summarized as follows:

**Officer B:** Interviewed on March 21, 2017. Officer B was working alone and was dispatched to a domestic disturbance call at XXXX W. 60<sup>th</sup> Street, XX. He was assisted by Officer A. Upon arrival, they knocked on the door and rang the doorbell, but there was no answer. While returning to their vehicles, Subject 2 opened a window [of the first-floor apartment] stating, "Nothing is going on here, she's being dramatic." Officer B stated he could hear a female in the background yelling, "He hit me, he won't let me leave and took my car keys!" Officer B stated that both officers yelled at Subject 2 that if nothing was going on, he should open the door so they could confirm. Officer B stated that their interactions with Subject 2 continued in this manner for 10 to 15 minutes.

Officer B stated he could see the female [Subject 1] approaching the apartment door, but Subject 2 would pull her. When she came to the window, Officer B could see injuries to her face. Officer B also heard a child in the background yelling, "Mommy, Mommy!" Subject 2 yelled at the officers that they could not enter the apartment without a warrant while lifting a wooden 2X4 over his head, yelling, "I will beat you both with this, I will shoot both of you on GD."<sup>18</sup>

Officer B stated that Officer A told Subject 2 they were not leaving and then requested a supervisor to the scene to make a forced entry. Sergeant A arrived and tried to convince Subject 2 to let the officers into the apartment. Subject 1 again tried to leave the apartment, but Subject 2 stopped her. Sergeant A requested CFD's assistance in making a forced entry.

CFD arrived and breached the door. Backup officers also arrived on-scene. Officers B, Sergeant A and another officer entered the apartment, while Officer A remained outside. Officer B entered the kitchen, saw the back door open, went through it and observed Subject 2 grab and slam Officer A to the ground. Officer B could not get to Officer A to assist because a locked gate separated them. He called for backup and ran out the front door. Officer B ran past Officer A in pursuit of Subject 2, but he heard Officer A scream in pain. Officer B then abandoned his pursuit of Subject 2 to assist Officer A.

**Officer A:** Interviewed on March 21, 2017, Officer A provided Detective A with an account substantially similar to the one that Officer B provided. Officer A saw Subject 2 run out the backdoor and gave chase. Officer A jumped on Subject 2, grabbing him around his back. Subject 2 dragged Officer A down the street and managed to break free, but Officer A kept chasing him. Subject 2 then grabbed Officer A and threw him, to the ground. Officer A was transported to Christ Hospital, where it was determined he sustained a broken right arm and shoulder in four locations.

**Officer E:** Interviewed on March 27, 2017. Officer E provided Detective A with an account substantially similar to those given by Officer B and Officer A. Officer E assisted in the forced entry into the apartment and assisted Officer A after he went down.

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<sup>18</sup> In his statement to Detective A, Officer B noted that he assumed that "GD" referred to Subject 2's gang affiliation.

**Sergeant A:** Interviewed on March 27, 2017. Sergeant A provided an account substantially similar to those summarized above. He did point out that when he asked Subject 1 for information on [Subject 2], she gave him incorrect information. However, Sergeant A was able to positively identify Subject 2 after he ran Subject 1's address through the Chicago Police Computer Database and found a photo of Subject 2 associated with it.

## VI. ANALYSIS

COPA must determine whether a preponderance of the evidence supports the allegations against the accused officers.<sup>19</sup> The preponderance standard is met when a proposition is more probably true than not. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005). The police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, and in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances. *Terry v. Ohio*, 392 U.S. 1. The Illinois Supreme Court articulated a general set of factors to determine whether a warrantless entry into a home is justified. The most commonly referenced factors that may establish the existence of exigent circumstances include: (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense was involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was a strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though nonconsensual, was made peaceably. *People v. Wimbley*, 314 Ill. App. 3d 18, 25 citing *People v. Abney*, 81 Ill. 2d 159.

Here, COPA finds the accused officers **EXONERATED** of the allegations set against them. Responding officers, including Sergeant A and Officers A, B and E were justified in their warrantless entry due to the exigent circumstances.

### Recency of alleged offense

Officers were first notified about Subject 2's alleged attack on Subject 1 on March 18, 2017 at 4:50 am, when Subject 1's mother called 911 to report it. Thereafter, until officers arrived at approximately 6:16 am, Subject 1 personally called 911 as many as nine times to report ongoing violent acts by Subject 2. In *Abney*, officers made a warrantless entry into the premises 1 ½ hours after the suspect beat the victim. Here, the totality of the circumstances (discussed in detail below) suggested Subject 2's offense was ongoing.

### Deliberate or unjustifiable delay

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<sup>19</sup> Municipal Code of Chicago 2-78-110.

“Closely related to the fact that the officers acted promptly, was the fact that there was no deliberate or unjustified delay by the officers during which time a warrant could have been obtained.” *Abney*, 81 Ill. 2d at 170. Upon arrival, the officers had reason to believe Subject 1 was distressed. Officers knocked on the Subject 1’s door to investigate. They left when there was no answer. While leaving, Subject 2 appeared in apartment window armed with a wooden 2x4, cursing, and threatening officers. They also heard a woman screaming for help. Given the totality of the circumstances, leaving the scene to secure a warrant was unreasonable and impractical.

#### Nature of offense

Exigent circumstances may well exist where there is only a serious crime coupled with a reasonable possibility of imminent danger to life, serious damage to property, destruction of evidence, or the likelihood of flight. *People v. Yates*, 98 Ill. 2d 502, 516. Here, officers had reason to suspect Subject 2 was dangerous. Although domestic battery is not a felony offense, it was undoubtedly a serious crime threatening imminent danger to Subject 1. Specifically, reports alleged Subject 2 punched Subject 1 in the face, a child was present, Subject 2 was intoxicated, he was out on bond and parole, and armed with a firearm. Later, officers witnessed Subject 2 armed with a wooden 2x4, cursing, threatening to beat and shoot officers, and the sound of a woman in distress (a woman was heard screaming “He hit me, he won’t let me leave, and he took my keys!”) Further, the circumstances, Subject 2 perched in the apartment before officers were able to secure the building, increased the likelihood of Subject 2’s ability to flee the scene (which he successfully did).

#### Armed suspect

The need for prompt action is further made apparent by the belief that the suspect was armed and exhibited some sign of a violent character. *People v. Abney*, 81 Ill. 2d 159, 171. Here, as discussed above, Subject 2 reportedly had a firearm and was seen making threats with a wooden 2x4. The officers reasonably believed the reports of Subject 2 being armed and dangerous considering he exhibited those behaviors in their presence. The report of Subject 2 having a firearm coupled with his violent presentation necessitated prompt action.

#### Probable Cause

A peace officer may arrest a person when he has reasonable grounds to believe that the person is committing or has committed an offense. *People v. Abney*, 81 Ill. 2d 159. A person commits domestic battery if he or she knowingly without legal justification by any means makes physical contact of an insulting or provoking nature with any family or household member. 720 ILCS 5/12-3.2(a)(2). Here, officers had substantial evidence Subject 2 committed domestic battery. Prior to making a warrantless entry, they had reports from Subject 1 and her mother alleging Subject 2 made ongoing physical attacks on Subject 1. They also heard a woman inside Subject 1’s apartment screaming for help. A child, who officers believed to be Subject 1’s daughter who reportedly witnessed the domestic battery, was also heard screaming “Mommy, mommy!” Those facts, coupled with Subject 2’s aggressive and threatening behavior towards the officers, gave them reasonable grounds to believe Subject 2 committed a domestic battery.

Likelihood of escape

The officers were prepared to leave the scene before Subject 2 presented himself in the apartment window. They reasoned with Subject 2 for ten to fifteen minutes, trying to get him to open the door. Subject 2's position at the apartment window likely allowed him to see the officers' movement. That advantage enabled him to escape before the officers came back to the apartment or secured the building. Ultimately, the likelihood Subject 2 would have escaped if not swiftly apprehended is evidenced by his successful escape from the officers on-scene.

Suspect on premises

The officers had more than a strong reason to believe Subject 2 was on the premises, prior to their warrantless entry. They saw and engaged with Subject 2 for ten to fifteen minutes before entering the apartment.

Reasonable force

All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest. *People v. Abney*, 81 Ill. 2d 159. Here, as discussed above, officers had probable cause to believe Subject 2 committed an offense and exigent circumstances existed warranting a warrantless entry. They used the least amount of force necessary to enter the apartment. The officers first knocked on the door but got no response. They then witnessed Subject 2's threatening behavior and spent ten to fifteen minutes encouraging him to consensually open the door. That too failed. Finally, the officers solicited CFD's assistance to gain entry. Although Subject 1's door was damaged in the process, the officers escalating use of reasonable force was proper under the circumstances.

COPA finds that the allegations that officers' actions causing property damage by breaking down Subject 1's apartment door are also **EXONERATED**, as Officers A, B, E and Sergeant A acted properly and lawfully in obtaining CFD's assistance to enter the apartment due to the exigent circumstances described above.

The actions of Officers C and D in arresting Subject 2 are also **EXONERATED**, as they possessed an arrest warrant issued for Subject 2 that issued on March 21, 2017, and the officers were able to locate and arrest Subject 2 under pursuant to such on April 5, 2017.

## VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer A	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without	EXONERATED

	obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	
Officer B	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	EXONERATED
Officer E	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	EXONERATED
Sergeant A	1. It is alleged that on March 18, 2017, at approximately 10:20am, you did enter the residence of Subject 1 at XXXX West 60 <sup>th</sup> Street, Chicago, Illinois, unlawfully and without obtaining a search warrant causing damage to property, in violation of Rules 1, 2, 3, 10 and 11 of Police Rules of Conduct.	EXONERATED
Officer C	1. It is alleged that on April 5, 2017, at approximately 10:25am, at XXXX South California Blvd., Chicago, Illinois, you did unlawfully arrest Subject 2 without probable cause in violation of Rules 1, 2, 3, 8, 10 and 11 of Police Rules of Conduct	EXONERATED
Officer D	1. It is alleged that on April 5, 2017, at approximately 10:25am, at XXXX South California Blvd., Chicago, Illinois, you did unlawfully arrest Subject 2 without probable cause in violation of Rules 1, 2, 3, 8, 10 and 11 of Police Rules of Conduct	EXONERATED

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Approved:

*Deputy Chief Administrator*

Date

Appendix A

Assigned Investigative Staff

<b>Squad#:</b>	
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Acting Deputy Chief Administrator:</b>	
<b>Attorney:</b>	